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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3965 OF 2007

Shri Dnyaneshwar Tukaram Yadav ... Petitioner

V/s

Deputy Divisional Engineer,
Nira Irrigation, Sub-Divn. Nira,
Pune; & ors. ... Respondents

Mrs. Anjali S. Ranade for the petitioner.

Mr. S.K. Chinchalikar, A.G.P. for the respondents.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 30TH JULY, 2007.

P.C.:

. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.

2. The petitioner has challenged the award of the Labour Court dated 30.9.2006. The Labour Court has held that, in view of the judgment of the Supreme Court in the case of **Executive Engineer, State of Karnataka v/s Somshekhar, reported in 1997 SC 2663,** the Irrigation Department of the Government of Maharashtra is not an "industry".

3. However, there is one judgment of this Court in

the case of **Executive Engineer, Yavatmal & anr., v/s Anant Yadao Murate & anr., reported in 1998 (3) Mh.L.J. 897,** where the learned Single Judge of this Court (F.I. Rebello, J.) has taken the view that the projects undertaken by the Irrigation Department of the State of Maharashtra fall within the definition of an "industry" under Section 2(j) of the Industrial Disputes Act.

4. Mr. Patne submits that the Supreme Court in the case of **State of Gujrat and ors. v/s Pratamsingh Narsinh Parmar, reported in (2001) 9 SCC 713,** has held that, Department of the Government is not an "industry". This judgment is obviously in respect of the facts involved in that case. There is an observation of the Supreme Court that there was no assertion on the part of the workman in that case that he was working in an industry and it was not pssible to accept that the Forest Department of a State was an industry, merely on the basis of submissions made on behalf of the workman. This judgment has no application to the facts in the present case.

5. No issues have been framed by the Labour Court. The question whether an establishment is an industry or not is mixed question of law and fact. The Labour Court was in error in dismissing the reference without there

being any evidence on record. The Labour Court must consider whether the petitioner is employed in an "industry" and whether he is entitled to any relief as claimed by him. The Labour Court is bound to frame proper issues before embarking on the assessment of the evidence led before it.

6. The award is hereby set aside. The reference is remanded to the Labour Court. The Labour Court shall frame the issues as aforesaid. The parties will then be at liberty to lead evidence on the aforesaid issues. The Labour Court shall thereafter decide the reference.

7. Petition allowed accordingly.

8. Parties to appear before the Labour Court on 13th August, 2007.

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